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UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF WASHINGTON  
 (HONORABLE LONNY R. SUKO)

UNITED STATES OF AMERICA, )  
 Plaintiff, ) CR-06-2080-LRS  
 vs. ) ORDER GRANTING MOTION TO  
 ) DISMISS  
 JUAN MANUEL MAGANA-ALVAREZ, )  
 Defendant. )

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Before the Court is the Defendant's Motion to Dismiss (Ct. Rec. 28). As set forth in his motion, the removal listed in the indictment cannot be used as a basis for an 8 U.S.C. § 1326 prosecution because the reinstatement procedure employed for this removal was ultra vires; the removal was issued by an immigration officer who lacked power to do so.

Additionally, the removal listed in the indictment cannot be used as a basis for an 8 U.S.C. § 1326 prosecution because the December 10, 1997, order of removal, which the August 22, 2001, order of removal sought to reinstate, did not comport with due process. Given these flaws, the present indictment must be dismissed.

Based upon the foregoing, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (Ct. Rec. 28) is **GRANTED**. The indictment in this case is dismissed with prejudice.

ORDER

**IT IS SO ORDERED.** The District Court Executive is directed to enter this Order and provide copies to counsel and the United States Marshals Office.

**DATED** this 3rd day of August, 2006.

s/Lonny R. Suko

LONNY R. SUKO

UNITED STATES DISTRICT JUDGE

## ORDER